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OFFICE OF PETITIONS

In re Application of Malmberg et al.	:	
Reissue Application No. 10/798,251	:	
Reissue Filing Date: March 11, 2004	:	Decision on Petition
Reissue of Patent No. 6,354,196	:	Under 37 CFR 1.55(c)
Original Issue Date: March 12, 2002	:	
Attorney Docket No. FRAB122492	:	

This is a decision on the petition under 37 CFR 1.55(c), filed January 3, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of priority to Swedish Application No. 990166 filed January 20, 1999.

The petition is **dismissed as moot**.

Facts:

The original application included a reference to the foreign application, for which benefit is now sought.

The original application issued on March 12, 2002, as Patent No. 6,354,196.

The instant reissue application was filed March 11, 2004. The reissue application failed to include a reference to the foreign application, for which benefit is now sought.

On October 3, 2005, the Office mailed a final Office action. The action stated,

A "claim" for the benefit of an earlier filing date in a foreign country under 35 U.S.C. 119(a)-(d) must be made in a reissue application, even though such a claim was previously made in the application for the original patent to be reissued.

The instant petition seeks to add a claim for the benefit of priority to Swedish Application No. 990166 filed January 20, 1999.

Discussion:

Although the foreign priority claim must be submitted, a petition under 37 CFR 1.55(c) is unnecessary.

37 CFR 1.55(a)(1)(i) states,

In an original application filed under 35 U.S.C. 111(a), the claim for [foreign] priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. This time period is not extendable.

The reissue application is not "an original application filed under 35 U.S.C. 111(a)," as set forth above. Therefore, the time limits in 37 CFR 1.55(a) are inapplicable and a petition under 37 CFR 1.55(c) is not required for the "late" submission of the claim for foreign priority.

In view of the above, the \$1,370 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

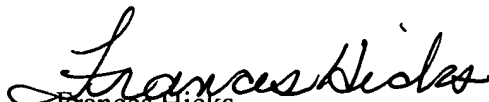
The Office notes a petition would have been necessary if the reissue application was adding a foreign priority claim which had not been perfected prior to issuance of the patent to be reissued. However, the record indicates the foreign priority claim was properly perfected prior to the issuance of the patent to be reissued.

Petitioner should note the foreign application number listed on the petition differs from the number listed on the supplemental declaration and on the patent to be reissued. The Office assumes the correct foreign application number is 9900166.

A corrected Filing Receipt, which includes the priority claim to the prior-filed foreign application, accompanies this decision on petition.

This application is being referred to Technology Center AU 1761 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to Steven Brantley at (571) 272-3203.


Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt